



Committee Report

To: Warden Mitch Twolan
Members of the Planning and Development Committee

From: Kara Van Myall
Director of Planning and Development

Date: October 17, 2019

Re: Process Improvements Official Plan Amendment

Staff Recommendation:

That the Committee direct staff to initiate a Bruce County Official Plan Amendment as attached to this report.

Background:

The Planning Department is undergoing a significant transformation and process improvement is one of our key areas of focus. Through this work staff identified an opportunity for policy changes to address some of the “tension” in Planning between future goals and current challenges as it relates to the following three issues:

Issue	Opportunity (Recommendations)
1. Conditions and information requirements for re-creating merged township lots	Clarify that township lot consents are not considered to be new lots or intended to be subject to information requirements or conditions related to future uses unless proposed by the application.
2. Recreating small developed lots that have accidentally merged	Permit merged developed lots to be severed, use conditions to maintain or improve wastewater
3. Lot additions for existing undersized lots	Clearly permit lot additions and boundary adjustments in all designations, including where required to improve existing deficiencies; remove requirement to rezone retained lot in Agricultural areas

Regarding Issue 1 (conditions for Township lots), staff note that the definition of development in the Provincial Policy Statement includes the creation of a new lot, and development is required to be consistent with provincial direction and policy.

These opportunities relate to issues that staff see with some frequency in their work. Staff appreciate that owners in these circumstances can experience frustration, including:

- Inability to sell one property separately from another property they own;
- They (often) have paid taxes based on 2 separate lots;
- The lots may not meet the policy requirements for severance;
- Pursuing studies or amendments to the policies to allow a severance can be costly and the outcome is uncertain;
- Existing Legal Dwellings / uses (and associated impacts) can continue indefinitely regardless of whether or where there is a lot line between them.

Staff reviewed the planning considerations related to these issues and prepared a draft Official Plan Amendment, which follows this report as Appendix 'A'. A detailed policy review and analysis of the current policy framework and provincial interests is attached as Appendix 'B' and notes potential options.

Financial/Staffing/Legal/IT Considerations:

A general amendment to the County Official Plan includes costs of approximately \$5000 for public notices in newspapers throughout the County to adequately notify the public of the proposal.

Amendments to establish a more flexible policy framework could reduce the number of applications for amendment to the Plan or local by-laws in order to enable a consent. It may also enable more clients to apply for consents. Application volume to department revenues may be impacted, noting however that application fees do not generally cover the costs associated with processing applications.

Advancing an amendment at this time offers an opportunity to test new policies for inclusion in the upcoming larger Bruce County Official Plan project.

Amendments which provide a clearer policy direction could assist applicants and staff in the review of development proposals, with associated time savings.

Interdepartmental Consultation:

Staff contacted the Drinking Water Source Protection Office and Niagara Escarpment Commission to review policies that may be applicable.

Link to Strategic Goals and Elements:

Goal 5 - Eliminate our own red tape

Element 'A' - All work processes designed for the fewest steps and the easiest completion;

Element 'E' - Focus on the internal and the external customer/client needs first

Written by: Jakob Van Dorp, Senior Planner, Planning and Development

Approved by:

A handwritten signature in black ink, appearing to read "Bettyanne Cobean".

Bettyanne Cobean
Acting Chief Administrative Officer

Appendix 'A': Proposed Amendment

1. New Section to be added to the Bruce County Official Plan:

6.5.3.1.1 Land Division Policies / General Policies / Merged and Undersized Lots

County Council acknowledges that some types of lots can merge on title if they have the same owner and may not meet current planning criteria for severance. County Council wishes to provide opportunities for lots to be re-created or to have boundary adjustments in certain circumstances.

The policies of this section apply to consent applications that propose:

- To re-create lots merged on title; or
- To provide lot additions to or between existing undersized lots. In the event of conflict between these policies and other policies of the Plan, these policies prevail.

i) **Merged Lots:**

- a. Merged lots may be re-created by consent if the lots conform to Land Division Policies of the Plan;
- b. Further to policy 6.5.3.1.xiii, the re-creation of one or more original Township lots by consent is not considered to be creating new lots. Such consents are not intended to be subject to information requirements and/ or conditions of approval related to future uses unless such uses are proposed as part of the application.
- c. Where more than one dwelling or use exists on the same lot, new lots may be created for the additional dwelling or use despite policies to the contrary so long as the following criteria are met:
 - i) The owner/applicant/agent must satisfy the zoning administrator that each and every lot to be severed or retained has existing development that was legally established; this policy does not permit the creation of vacant lots.
 - ii) The additional dwelling/ use on the lot must have occurred as a result of lots merging on title, and not as a result of additional uses being constructed on a lot in accordance with the zoning by-law (for example a detached accessory dwelling on a commercial lot or a secondary dwelling on a lot for farm help).
 - iii) The Chief Building Official of the Municipality confirms that the dwelling or use is habitable / usable at the time of application.
 - iv) Where a connection to municipal or communal sewage disposal systems is not available, each and every proposed lot must be able to accommodate its own sewage disposal system within the property. Although not preferred, existing shared wells may be permitted, and easements may be established for existing shared wells.
 - v) When re-creating merged, developed lots in accordance with this policy, the approval authority may approve consent(s) with different boundaries than the original lots where such boundaries better accommodate buildings, structures, services, access, or a more even distribution of land between lots.
 - vi) Where the resulting lots are smaller than 4000 square metres, a development agreement must be registered on title of the undersized lots

to prevent further intensification of the use by way of enlargement or additional plumbing fixtures unless the lot is connected to a municipal or communal sewer system with capacity or the proposed development is supported by a nitrate study as outlined in Section 4.7.5.8 of this Plan.

- ii) Lot adjustments / additions:
 - a. Lot adjustments and additions within the Agricultural designation are permitted subject to Section 6.5.3.3 Consents - Agricultural Areas
 - b. In all other designations, lot adjustments are permitted for legal and technical reasons. Lot adjustments are limited to such purposes as easements, correction of deeds, quit claims and minor boundary adjustments; all of which do not result in the creation of a new lot.
 - c. Boundary adjustments and lot additions from lots with private sewage disposal systems that are smaller than 4000 square metres or the minimum lot area for their designation are permitted as long as the lot addition does not result in the enlarged parcel becoming larger than the parcel that is becoming smaller.
 - d. Where 2 or more independently transferable lots are being consolidated into fewer total lots, the resulting lots may be certified despite continuing to be undersized.
 - e. Boundary adjustments and lot additions are not permitted to add lands outside of a settlement area to lands within a settlement area.

2. Sentence to be deleted from the Bruce County Official Plan:

Delete the final sentence from Policy 6.5.3.3.6 - Consents - Agricultural Areas, as shown below:

Lot enlargements for the expansion of an existing Secondary Compatible Use as per Section 5.5.4.1; or existing Farm Related Commercial or Industrial Use as per Section 5.5.9; or existing Institutional Use as per Section 5.5.10 shall be limited in area and shall only be of sufficient size to accommodate the commercial, industrial or institutional use, accessory buildings (where including accessory buildings does not render the lot excessively large in the opinion of the Land Division Committee), a well and a sewage disposal system, while ensuring that as little acreage as possible is removed from the agricultural lands. ~~As a condition of consent, the remnant parcel shall be rezoned for agricultural purposes only provided it is vacant.~~

Appendix ‘B’: Detailed Planning Analysis:

Background: Merged Lots

The *Planning Act* generally prohibits a property owner from transferring a piece of property if they also own abutting lands. There are some exceptions, for example if the lots are in a plan of subdivision or when consent (often called a severance) is given by the Land Division Committee. To further complicate matters, original “Town Plot” lots are considered to be “subdivision” lots, however original “Township” lots are not.

Owners can preserve their ability to transfer adjacent lots independently by careful estate planning and seeking legal advice regarding who appears on title of the lots. This has not always happened and may continue to occur.

Issue #1 Requirements and Conditions for Severing Merged Lots that Conform to Policy

Sometimes lots that have merged on title will meet the lot area, frontage, density, and general consent policies to be eligible for severance. This is most commonly the case when an original Township lot merges with an adjacent Township lot. As the lots cannot be transferred independently, a consent is required.

Lot creation by consent requires the Planning Authority to review various matters (see Provincial Interests below), which can appear onerous to owners who are seeking to regain an ability that they formerly had - to transfer previously existing lots independently of each other.

Current Policy

General consents policies of the County Official Plan require that

“vii) “The severed and retained lot(s) shall: be of acceptable size and dimension for the intended use; have regard for the proper treatment and disposal of stormwater and proper lot grading; have safe and adequate access to the highway system; be consistent with the sewage and water servicing policies of Section 4.7.5 [Water and Sewer Services]; not be premature in regard to the public interest; have regard to the natural environment.”

“x) On the granting of a consent, conditions may be imposed on the severed and retained lot(s) to ensure the proper development of the severed and/or retained lots(s) including but not limited to the requirement for a stormwater management plan, lot grading plan, tree retention plan, parkland dedication, cash-in-lieu of parkland, roadway/highway widening dedication servicing requirements, etc.”

And also provide that:

“xiii) Nothing in this Plan shall prohibit the recreation of the original Township lot fabric provided both the severed and retained lots comply with the minimum lot area requirements of this Plan and both the severed and retained lots front onto, and have access to, an opened and maintained municipal road that is maintained on a year-round basis at the time of application.”

Analysis:

The Policy permitting re-creation of the original township lot fabric is intended to support a common size for parcels of land in the countryside and enable straightforward transfers of township lots that merge on title with only basic requirements for area, frontage and access on a road.

The Plan and local by-laws generally permit a range of uses in Rural/Agricultural areas which may not involve development or site alteration, and within which there may be many possible locations for development.

Policies (vii) and (x) permit the use of development agreements and other tools as conditions of consent approval. In some circumstances these conditions or agreements have been applied to consent applications on larger lots (not necessarily township lots) as a way of recognizing that

- Lot creation is development and enables further development;
- There are significant natural features or archaeological potential;
- A specific development site has not been identified; and
- Natural features may change

These conditions or agreements provide greater flexibility than a requirement to complete all studies prior to submitting an application to create a lot. Agreements also do not prohibit the creation of lots or re-creation of the original township lot fabric but do provide a means of ensuring that development of lots is consistent with Provincial interests and supports the goals and objectives of the Official Plan.

Through a recent application there appeared to be concern amongst Committee members regarding the use of conditions when dealing with former township lots. This report provides the committee with an opportunity to discuss in general terms the intent and application of these policies.

Options and Actions

Options and suggested actions to move them forward are outlined below:

Option	Summary	Suggested Action
A - Status Quo	Leave policies as they are	No action required.
B - Treat as new lots	Amend Official Plan consents policies to clarify that all lot creation is subject to the goals and objectives of the official plan	Resolution to direct staff to Initiate County Plan Amendment
C - Do not treat as new lots	Amend Official Plan consents policies to clarify that township lot consents are not considered to be new lots or intended to be subject to information requirements or conditions related to future uses unless proposed by the application.	Resolution to direct staff to Initiate County Plan Amendment as attached

Staff recommends that option 'C' be pursued as a means of clarifying the Plan intent for these lots.

Issue 2: Severing undersized lots that have merged on title

Staff estimate there to be least 20 cases in Bruce County where two (or more) undersized adjacent lots with dwellings and septic systems have merged on title. In many cases, the owners did not intend to merge the lots and were not aware that the lots had merged until they attempted to sell one of them.

These lots are considered "undersized" if their ability to effectively dilute wastewater that is generated on the lot is unknown. Protection of ground and surface water from contamination is a major objective of land use planning. Concentration of nutrients in

human waste, for example due to many septic systems in a small geographic area, can cause health and environmental impacts. These impacts are different from biological contaminants (such as e.coli) which may be effectively managed through proper design and maintenance of a septic system.

When developed lots merge, the ‘extra’ development may not conform to the zoning by-law. If Legally established, it would be considered a legal non-conforming use. Owners of non-conforming dwellings may be able to get building permits to maintain their buildings, but may not be able to make the use “larger” (i.e. by way of an addition, by converting a room to a bedroom, or adding new plumbing fixtures, without a committee of adjustment approval or a zoning by-law amendment).

Current Policy

- The [**County Official Plan**](#) sets a 4047 square metre (1 acre) minimum lot area for lots with septic systems. The Plan requires groundwater quality impact studies that follow provincial guidelines where smaller lots are proposed. The studies must demonstrate that each new lot can effectively dilute nutrients to meet the Ontario drinking water standards. Policies do not recognize situations where undersized lots merge on title.
- Planning Act regulations require similar studies for applications on an existing lot when the design sewage flow rate would or could exceed 4500L/day.
- Some Local Official Plans set a maximum density for development on private or partial services.
- The [**Niagara Escarpment Plan \(NEP\)**](#) applies to some areas within the Municipality of Northern Bruce Peninsula and the Town of South Bruce Peninsula. Lot creation policies of the NEP outline criteria to be considered in this scenario:
 - neither the dwelling on the new lot nor the dwelling(s) to be retained were approved on the basis that they would be for temporary use or as a dwelling unit accessory to agriculture;
 - all the dwellings on the property are existing uses as defined in this plan and have received approval from the municipality;
 - both the dwelling on the new lot and the dwelling retained are of a reasonable standard for habitation and have been used as a dwelling unit within the year before making application to sever;
 - severance of the existing dwelling does not conflict with Part 2.4.18 below; and
 - a new lot is not to be created for a mobile or portable dwelling unit.

Analysis

Applications to re-sever undersized merged lots face a challenge because the groundwater quality impact study (noted above) is costly and in some cases the lots are so small that the study is unlikely to support lot creation.

To support ground and surface water quality, the Planning objective would be for “extra” dwelling(s) on undersized lots to be removed so that there is a lower density of development on septic systems and the nutrient impacts to groundwater are thus reduced.

However, removing extra dwelling(s) is a cost to owners who may have “legal non-conforming” or “grandfathered” rights; if the dwellings were legally established, they have a right to be there.

It is unlikely an owner would voluntarily remove a well-maintained dwelling. Removal of a dwelling would likely follow a period where it is poorly maintained and/or becomes derelict.

This could have adverse neighbourhood impacts and also removes housing stock from the community. Strong communities and providing housing are also planning objectives.

If it is unlikely that density will be reduced, the next-best thing from a groundwater quality perspective would be “don’t make it worse - avoid increasing nutrient contamination.” This objective can be met on merged lots where a committee of adjustment approval is required for the use to expand. If the lots were severed and number of dwellings / uses again conforms to the bylaw this opportunity to reviewing groundwater impacts would be lost.

A development agreement can be used to protect groundwater from impacts due to additional development. This approach has been proposed by a planning consultant acting for an applicant in a current consent proposal that is awaiting the Committee’s discussion.

It is important to note that this analysis applies only:

- Where the lots in question have existing development - creating vacant undersized lots with private services would not support the groundwater quality objective;
- Where it can be demonstrated that the existing development was legally established - if development was not legally established, it doesn’t have a right to be there;
- Where the multiple dwelling situation occurred as a result of lots merging on title; some zones permit more than one dwelling (example: for farm help on a farm) and do not intend for such dwellings to be subsequently severed;
- Where the proposed lots can accommodate their onsite services, especially the sewage disposal system, within the property. Although not preferred, existing shared wells may be appropriate. A new lot line may not need to follow the former lot line, if it helps to accommodate services or share land more evenly between lots.
- Where further groundwater impacts are avoided (i.e. through development agreement)

Options and Actions

Options and suggested actions to move them forward are outlined below:

Option	Summary	Suggested Action
A - Status Quo	Consider applications on a case-by-case basis where applicants complete studies or request exemption through OPA	No action required.
B - Do Not Support	Continue with multiple dwellings on a lot (refuse consent applications unless policy and study criteria are met); legal non-conforming status permits maintenance and prevents expansion of uses	Adopt Resolution that the County does not support severance of merged undersized lots
C - Support severance, manage future impacts	Permit developed lots to be severed, use conditions and/or restrictions on title to maintain or improve wastewater	Resolution to Initiate County Plan Amendment as attached
D Support severance	Permit dwellings to be severed with no specific limits on re-development or intensification	Resolution to Initiate County Plan Amendment to specifically consent in these circumstances

Staff recommend that option ‘C’ represents the best balance of public and private interests and have included this option in the attached amendment.

Issue 3: Lot Additions between undersized lots

Similar considerations apply when there are two adjacent undersized lots next to each other, and one owner wishes to obtain lands from their neighbour. This might be proposed to improve access, increase a yard setback, facilitate building an addition, or obtain land under an existing building. If both lots are legally existing separate lots, the density of development has been established. Making one lot a little smaller to make another lot a little bigger does not affect the density of dwellings and is unlikely to have a significant effect on the intensity of use. This approach would be appropriate to make lot areas more equal but should not result in a “retained” lot that is smaller than a newly enlarged lot. We have also had cases where a vacant undersized lot is split into two pieces and added to adjacent undersized parcels, creating two larger lots from three smaller lots.

Current Policy

Boundary adjustments/enlargements are not discussed in the general consents policies of the County Official Plan. The plan does specifically permit consents for boundary adjustments and lot enlargements (and establishes criteria for them) in the Agricultural and Rural designations, as below:

Section 6.5.3.3 Consents - Agricultural Areas:

- In no instance shall an original Crown surveyed lot be divided into more than two (2) parcels including the retained portion (unless divided for school, church, road widening, minor lot line adjustments)
- Lot adjustments for legal or technical reasons are permitted, limited to easements, correction of deeds, quit claims and minor boundary adjustments; all of which do not result in the creation of a new lot.
- Lot enlargements permitted for expansion of an existing Non-Farm Residential lot; limited in area to accommodate the residence, accessory buildings, a well and a sewage disposal system, while ensuring that as little acreage as possible is removed from the agricultural lands. The maximum lot size shall generally not exceed 0.81 hectares (2.0 ac.). As a condition of consent, the remnant parcel shall be rezoned for agricultural purposes only provided it is vacant.

Section 6.5.3.4 Consents - Rural Areas:

- Lot adjustments for legal or technical reasons permitted for easements, correction of deeds, quit claims and minor boundary adjustments; all of which do not result in the creation of a new lot.
- Lot enlargements for an existing Non-Farm Lot or Non-Farm Residential Lot criteria are:
 - maximum lot size 4 hectares, justification required for a proposed lot size over 0.81 hectares (2 acres);
 - Lot addition lands must be designated ‘R - Rural’ unless receiving lot is smaller than 0.4 hectares (1 acres) in size, wherein ‘A - Agricultural’ lands may be added to a maximum total lot area of 0.61 hectares (1.5 acres).
 - Designation beneath ‘Hazard’ land area applies
 - Retained parcel must be viable for its existing or proposed future use,
 - Frontage-to-depth ratio shall be a maximum of 1:3 and conform to the appropriate zoning requirements for lot frontage.
 - Must meet MDS I setbacks from surrounding livestock facilities

The PPS permits lot adjustments in prime agricultural areas for legal or technical reasons including purposes such as easements, corrections of deeds, quit claims, and minor boundary adjustments, which do not result in the creation of a new lot.

Analysis

In practice, lot additions where the parcels meets all of the policies for severance are routinely processed.

Typically, however, lot additions are requested where lots are small and space is needed to permit a new building to be constructed or because existing development was located partly on another lot. This is most common in settlement areas and Rural Recreation areas.

Having no clear policy for lot additions where there are existing undersized lots leaves some uncertainty which could impact the consistency of review for these proposals.

The final sentence of the Agricultural consents policy for lot additions to undersized lots in the Agricultural designation appears intended to prevent dwellings from being constructed on a farm parcel that has granted a lot addition to a non-farm lot. However, it does not state this clearly. If this is the case, the effect on the retained lot is the same as if a surplus farm dwelling was severed, despite the application creating no new lot. Staff recommend that this policy be understood to describe what makes a boundary adjustment in favour of a non-farm lot “minor,” and that the statement regarding rezoning be deleted as being unclear, a deterrent to these boundary adjustments, and more restrictive than the Provincial Policy Statement.

Options and Actions

Options and suggested actions to move them forward are outlined below:

Option	Summary	Suggested Action
A - Status Quo	Leave policies as they are	No action required.
B - Do Not Support	Reserve the County consent certificate only for applications that yield lots that conform to current lot creation standards	Adopt Resolution which makes it clear to applicants that the County does not support lot additions from undersized lots
C - Clarify policies	Amend policies to clearly permit lot additions and boundary adjustments in all designations, including where required to improve existing deficiencies; remove rezoning requirement in Ag areas	Initiate County Plan Amendment as attached to specifically permit consents in these situations

Staff recommend Option C.

Provincial Interests relevant to all three Planning Issues:

Planning decisions are required to have regard for provincial interests outlined in [Section \(2\)](#) of the *Planning Act*, Land Division criteria in [Section 51\(24\)](#) of the *Planning Act* and be consistent with [Provincial Policy Statements](#) and conform to or not conflict with provincial plans that are in effect.

Planning Act:

The most relevant Section (2) interests include:

- the orderly development of safe and healthy communities,
- the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems; and
- the protection of public health and safety

Section 51(24) criteria include “the suitability of the land for the purposes for which it is to be subdivided”

Provincial Policy Statement (2014):

Direction for water is found in Section 2.2.

2.2.1 Planning authorities shall protect, improve or restore the quality and quantity of water by:

e. implementing necessary restrictions on development and site alteration to:

1. protect all municipal drinking water supplies and designated vulnerable areas; and
2. protect, improve or restore vulnerable surface and ground water, sensitive surface water features and sensitive ground water features, and their hydrologic functions;

Quality and quantity of water is measured by indicators associated with hydrologic function such as minimum base flow, depth to water table, aquifer pressure, oxygen levels, suspended solids, temperature, bacteria, nutrients and hazardous contaminants, and hydrologic regime.

Development means the creation of a new lot, a change in land use, or the construction of buildings and structures, requiring approval under the Planning Act.

Direction for lot adjustments in prime agricultural areas is found in Section 2.3 - Agriculture:

2.3.4.2 Lot adjustments in prime agricultural areas may be permitted for legal or technical reasons.

“Legal or technical reasons”: means severances for purposes such as easements, corrections of deeds, quit claims, and minor boundary adjustments, which do not result in the creation of a new lot.

“Development:”

means the creation of a new lot, a change in land use, or the construction of buildings and structures requiring approval under the Planning Act, but does not include:

- a) activities that create or maintain infrastructure authorized under an environmental assessment process;
- b) works subject to the Drainage Act; or
- c) for the purposes of policy 2.1.4(a), underground or surface mining of minerals or advanced exploration on mining lands in significant areas of mineral potential in

Ecoregion 5E, where advanced exploration has the same meaning as under the Mining Act. Instead, those matters shall be subject to policy 2.1.5(a).

Comments on PPS:

Severance of lots qualifies as development, and is therefore required to meet the “protect, improve, or restore” direction. The PPS as a forward-looking statement of interests does not directly address legal non-conforming uses.

Staff contacted our Ministry of Municipal Affairs representative for assistance in a policy scan for merged undersized lots. It was noted that some jurisdictions in Eastern Ontario use a minor variance process to address lot area when re-severing inadvertently merged developed lots. This indicates that there is not a planning policy conflict.

Drinking Water Source Protection Plan

This plan has been approved under the Clean Water Act and identifies actions required to protect municipal drinking water supplies based on vulnerability to contamination.

The Source Protection Plan identifies Wellhead Protection Areas A and B and Intake Protection Zone 1 areas where there is a vulnerability score of “10” as areas where an onsite sewage disposal system or a sewage holding tank may be a significant threat. The Plan includes the following policy (02-05):

“New lots created either through severance or subdivision under the Planning Act shall only be permitted by the planning approval authority where the lots will be serviced by a municipal sewage system or where an on-site septic system could be located outside of a vulnerable area with a vulnerability score of 10.”

The Source protection plan also directs The Ministry of Municipal Affairs and Housing to consider changes to the Ontario Building Code and other such legislation to:

1. Set standards under the Ontario Building Code to define advanced systems, including, but not necessarily limited to, standards for Nitrate and Phosphorous levels in effluent; and
2. Require that advanced septic systems be required for new installations in vulnerable areas where an on-site sewage system is or would be a significant drinking water threat.

The Building Code now references the CAN-BNQ standard which can include nitrate and phosphorous reduction but has not acted on the recommendation that these systems be required in all vulnerable areas.

These systems have also been required as part of the approval of new “infilling” lots within in areas of high-density development on private sewage disposal systems and could also be used to support groundwater quality improvements where merged lots are proposed to be re-severed.

Background work on the source protection plan also identified vulnerable surface and groundwater features which may warrant advanced systems. The Source Protection plan did not provide policies on these areas as it is focused on municipal drinking water systems.